THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO : 16812 of 2005

DATED: 03.08.2005

Between:

D.Ashfok Ahamed, S/o D.Anwar Basha, Muslim,

Aged about 32 years, Railway Contractor,

R/o D.No.18/71 A, Main Road,

Guntakal – 515 801, Anantapur District.

…PETITONER

And:

Union of India represented by the

General Manager, South Central

Railway, Rail Nilayam,

Secunderabad – 500 071 and others.

…RESPONDENTS

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ORDER:

Petitioner assails the notice of the third respondent, dated 23.07.2005, which reads as under: -

> "Further to "48 Hours notice" issued vide this office letter of even No.dated 13.7.2005 please note that the contract under the above work awarded vide this office acceptance letter No.G/W.496/TC/Co-Ord/5679 dated 30.10.2003 is "**Terminated" at your "Risk and cost"** with immediate effect under clause 62 of

> General conditions of contract, since you have failed to start the work.
>
> Please also note that the above work will be entrusted to another agency and extra expenditure, if any will be recovered from you in terms of clause-62 of the General conditions of contract. The Railway also reserves the right to forfeit the whole or such portion of Security Deposit as it may deem fit"

Earlier by an order, dated 23.05.2003, of the same respondent acceptance of the petitioner's tender was recorded and was held to constitute a binding contract between the petitioner and the respondent organisation-the railway administration until the execution of a formal agreement with regard to the works relating to repairs of footpath on girder bridges (Major/minor) with the provision of MS chequred plates on Wadi-Renigunta, Guntakal-Nandyal and Guntakal-Bellary sections. The notice, dated 23.07.2005, impugned herein was issued to the petitioner purportedly under Clause-62 of the General conditions of Contract, which allegedly constitute the contract between the parties. According to the petitioner, there was no formal contract entered into and the earlier period of contract has also expired, as he did not agree to extension of the contract. All these are disputed questions of fact and at any rate, the impugned notice, dated 23.07.2005, is issued to the petitioner pursuant to a claimed contract between the parties. The contact is not a statutory contract. The dispute is a post-contractual dispute. Such disputes normally do not have a adjudicative disposition before this Court under Article-226 of the Constitution of India vide ***M/s Radha Krishna Agarwal Vs. State of Bihar*.**

Accordingly, the writ petition is dismissed preserving liberty in the petitioner to pursue the appropriate and alternative remedies either before the Arbitrator, if there be an arbitration clause between the parties, or before the civil Court of competent jurisdiction. The dismissal of this writ petition shall not be construed as an expression by this Court on the merits of the petitioner's contentions. No order as to costs.

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(GODA RAGHURAM, J)

03.08.2005

dr